

APPEAL NO. 041130
FILED JUNE 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 13, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from July 8, 2003, to the date of the CCH.

The appellant (carrier) appealed, basically on sufficiency of the evidence grounds, contending that the claimant's injury was a diabetic ulcer. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a long time diabetic, was employed as a maintenance worker for the employer. The claimant testified that on _____, as he was performing his duties, he stepped on a screw which penetrated his soft soled shoe and caused a puncture wound in the ball of his right foot. Whether the claimant actually stepped on a screw or nail, whether the claimant had other preexisting diabetic ulcers, and the circumstances why the claimant failed to take a drug screen were all disputed. The claimant said that he attempted to self treat his foot injury and went to the VA Hospital on June 23, 2003, for treatment. Whether the claimant was treated for a right big toe injury or puncture wound is disputed. In any event, the wound became infected and ultimately the claimant was hospitalized on July 8, 2003, for possible amputation; however, the claimant's foot was saved and the claimant was hospitalized for a month. The claimant's treating doctor, a chiropractor, continues to keep the claimant off work because of the danger of reinfection of the foot.

The evidence was obviously in conflict. The basic question of whether the claimant stepped on a screw or nail or whether the claimant had a preexisting diabetic ulcer was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge